

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

LOCAL UNION NO. 2, INTERNATIONAL)	
BROTHERHOOD OF ELECTRICAL WORKERS)	
)	
Petitioner,)	
vs.)	Public Case No. 116
)	
CITY OF KIRKWOOD, MISSOURI)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

FINDINGS OF FACT

On November 4, 1975, International Brotherhood of Electrical Workers, Local Union No. 2, filed a request with the State Board of Mediation, herein referred to as the Board, requesting the Board to make a determination of an appropriate bargaining unit within the Sanitation Department in the City of Kirkwood, Missouri.

On November 20, 1975, a pre-hearing conference was conducted in this matter in Clayton, Missouri. A determination was made at that time that a hearing would be necessary in order to resolve the appropriateness of the unit.

On January 29, 1976, a hearing was called to order in this case at the St. Louis County Courthouse in Clayton, Missouri. The case was heard by a panel of three members from the Board which was made up of one employer member, one employee member and the chairman. Both the petitioner and the respondent in this case were represented by counsel.

The only question to be determined by the Board in the case before us is whether an individual who serves in a dual capacity, that of a supervisor and that of a working crewman, should be part of an appropriate bargaining unit.

The Sanitation Department in the City of Kirkwood is responsible for the collection and removal of all solid waste generated by that community. The day to day operation of the Sanitation Department is the responsibility of a person designated by the title of superintendent. He is responsible for assuring the City that there is a full complement of men on duty to perform the necessary tasks and that the equipment is properly maintained and that the collection system functions within the scheme that the City has designed. The superintendent has the power to hire and fire individuals and has the power to transfer individuals within his department.

Under the superintendent there are approximately seven truck drivers and fourteen collectors. The drivers are referred to as driver-foremen and their duties consist of seeing that the waste material on their routes is collected and they have the responsibility of directing the collectors, the collectors being the actual men who pick up the trash, to the appropriate customers. The driver-foreman has no authority to hire, fire or discipline, and when a problem does arise he reports directly to the superintendent. The driver-foreman does not serve in a supervisory capacity.

The individual in issue works a full six-day week, year around. He serves in the capacity of a driver-foreman five days a week, Monday through Friday, working with a crew of two collectors. While serving in this capacity he has no supervisory responsibility. On the sixth day, Saturday, and on all other days on which the superintendent is absent, including vacation periods which presently amount to four weeks a year, he serves as acting foreman or acting supervisor and assumes the responsibilities and duties of the superintendent. While acting in behalf of the superintendent he receives additional hourly benefits.

CONCLUSIONS OF LAW

In deciding this case we must look at the relevant statute section, which is 105.500 (1) RSMo. 1969.

"Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this particular instance we have an individual who serves in a dual capacity. The individual performs supervisory functions on a regular basis at least one day a week and these responsibilities are extended during the absence and vacation periods of the regular superintendent. The same individual, five days a week, year around, serves as a driver-foreman with the working crew and does not act in a supervisory function.

In a dual capacity situation the Board must make a determination as to the individual's identifiable community of interest. It is quite clear from the testimony presented at the hearing that the person at issue is primarily attached to the non-supervisory work force and that he shares a substantial community of interest with his fellow non-supervisory workers in the conditions governing the performance of their work. An employee who spends at least half of his time working in a unit should be eligible to participate in the selection of a bargaining representative because he has a substantial interest in the employment conditions of the unit and the outcome of the election. Cornhuskers Television Corporation (1957) 117 NLRB 1065.

The problem before us is a commonplace one whenever an employer decides to promote a rank and file employee to the position of supervisor, that is when there is a shift of an employee's status up and down. There is definitely a problem for both the employer and the union based upon the fears of divided loyalty, however, this problem may be minimal where an employee does not actually have the authority to hire and fire.

DECISION

It is the decision of this Board that the individual referred to herein as both an acting foreman and a driver-foreman should be part of the requested appropriate

bargaining unit. The appropriate unit is defined as follows: All members of the Sanitation Department of the City of Kirkwood, Missouri, excluding the superintendent.

Entered this 8th day of April, 1976

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael Horn
Chairman

/s/ Harry R. Scott
Harry R. Scott
Employer Member

/s/ Richard Mantia
Richard Mantia
Employee Member